IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09/10/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
The Honourable Mr. Justice A.K. RAJAN
The Honourable Mr. Justice M. THANIKACHALAM

H.C.P. No.2366 OF 2002

K. Velu ..... Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by the Secretary to Government
Public (SC) Department
Fort St. George
Chennai 600 009

2. The Union of India
rep. by Secretary to Government
Ministry of Finance
Department of Revenue
New Delhi

3. The Superintendent of Central Prison
Central Prison
Chennai 600 003 ..... Respondents

Petition under Art.226 of the Constitution of India, praying
for a Writ of Habeas Corpus as stated in the petition

For Petitioner :: Mr. S. Palanikumar

For Respondents :: Mr. A. Navaneethakrishnan
Addl. Public Prosecutor

:ORDER

V.S. SIRPURKAR, J.

The question referred before us is as follows:

Whether the service of a copy of a petition in a proceeding to which the

detenu is a party as an accused, service of such copy having become necessary subsequent to the order of detention and the purpose for which the copy is served is self-explanatory by a reading of that document, vitiates the order of detention on the sole ground that it was not accompanied by a covering letter.

2. The said reference came to be made by Jayasimha Babu and S.R. Singharavelu, JJ., as the learned Judges were not in agreement with the judgment of the Division Bench of this Court reported in 2001 (3) CTC 83 (RABIYATHIL PATHAVIA v. STATE GOVERNMENT OF TAMIL NADU) wherein, the Division Bench had quashed the detention of the detenu under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short COFEPOSA) on the ground that after the detenu was lodged in detention, some documents came to be served on him without there being any covering letter along with

it so that, because of the absence of the covering letter, the detenu was likely to be confused and that could have affected his right to make a proper representation.

3. The judgment in Rabiyathil Pathavia case, cited supra, is seemingly based on the Apex Court judgment in State of Tamil Nadu v. Senthil Kumar (1999 SCC Crl. 299). It is pointed out in the reference order that the judgment of Rabiyathil Pathavia, cited supra, has been followed in two other cases, viz. Valarmathi v. State of Tamil Nadu (H.C.P. No.23 of 2002) and A.L. Ahamed Thambi v. State of Tamil Nadu (H.C.P. No.768 of 2002).

4. Since all the aforesaid Division Bench judgments follow from Senthil Kumar case, cited supra, it will be proper to see as to what is the ratio of that judgment and whether the judgments in Rabiyathil Pathavia case, Valarmathi case and Ahamed Thambi case, cited supra, have been correctly decided.

5. When we had a glance at the facts in Senthil Kumar case, cited supra, it appears that during the detention of the detenu therein, three documents came to be supplied, which were post-detention documents. They were (i) Anticipatory Bail application of the co-accused Abdul Hakkim; (ii) counter-affidavit of the Customs Department filed in the High Court in the criminal original application filed by Abdul Hakim; and (iii) application filed by the detenu before the Chief Metropolitan Magistrate, Chennai. These three documents were served on the detenu as further development documents. The High Court had allowed the petition and on the appeal before the Supreme Court, the Supreme Court posed the question in the following words:
Whether the course of action adopted by the State Government in sending the documents in question to the detenu has infringed any right of the petitioner?
The Supreme Court had made a reference to the celebrated decision of State of Bombay v. Atma Ram Shridhar Vaidya (AIR 1951 SC 157) and reiterated the observations made therein to the effect that the additional grounds cannot be given after the grounds are furnished in the first instance. However, if the

particulars of the facts mentioned or indicated in the grounds are furnished after the grounds are supplied, they should be such so as not to come in conflict with giving the earliest opportunity to the detained person to make a representation. The Supreme Court further very categorically held in paragraph 11 that the grounds of detention were already served on the detenu within the specified time. However, the documents in question given to the detenu were not supplemental or additional grounds but additional material in support of the grounds already conveyed to the detenu. Treating them as additional material in support of the grounds, the Apex Court went on further to hold that the State had acted in conflict with the safeguard of giving the earliest opportunity to the detenu to make an effective representation inasmuch as the documents were sent to him in a casual manner without a covering letter and without being told for what purpose they were sent to the detenu and without mentioning that they would be placed before the Advisory Board as well as the Government in connection with the confirmation of the order of detention. It was consequently held that the detenu was deprived of his right to make an effective representation to the Government. The Supreme Court further observed that a casual or random approach in complying with procedural safeguards more often results in infringement of the safeguard and vitiates the detention and in this view of the matter, the Supreme Court further held that the manner in which the documents were served on the detenu did cause confusion to the detenu as he was kept in dark about the purpose of furnishing the documents and far from giving him the earliest opportunity to make the effective representation, it deprived him of a chance of making a representation which resulted in infringement of his right guaranteed under Art.22 (5) of the Constitution of India.

6. The ratio of the judgment, therefore, appears to be that any documents, which are in the nature of additional material in support of the grounds, if are decided to be supplied to the detenu, such supply cannot be in a casual manner. The detenu must be informed the purpose for which the said documents are supplied to him. It should also be made known to the detenu as to who had sent those documents. In short, firstly, the documents should be in the nature of additional material in support of the grounds; and secondly, such additional material should not be casually supplied.

7. On this backdrop, when we see the judgment in Rabiyathil Pathavia case, cited supra, we find that the learned Judges have not given any finding regarding the nature of the documents served. It was specifically pleaded before the Division Bench in that case, that the documents supplied had nothing to do with the preventive detention and that these were the documents in respect of the proceedings between the Customs Department and the detenu with regard to the disposal of the seized goods under Sec.451 of the Code of Criminal Procedure, which was an independent action. It was also specifically contended therein that since the Court had directed the Customs Department to serve the notice on the detenu of the petition filed by the Department under Secs.110(1A), 110(1B) and 110(1C) read with Sec.451 of the Crl. P.C., the said documents had been supplied. The only reason which the learned Judges have given is in the following words:

"Had it been the case of the respondents that the additional documents had no connection at all with the preventive detention, nothing prevented them from stating so in a covering letter attached to the additional documents".

8. We cannot agree with this view for the simple reason that the documents themselves were self-explanatory. If the documents had no nexus with the detention aspect, it was not necessary for the detaining authority to explain the purpose for which the documents were supplied. Once the documents have no nexus, such a responsibility goes away. This is apart from the fact that the said documents were absolutely self-explanatory. This is by far the only reason given by the learned Judges.

9. On this backdrop, when we see the observations in the Supreme Court judgment, it is apparent that the Court had noted very specifically that the documents in that case were related to or had the nexus with the detention. In that case, even the High Court had given a finding that they were the vital documents. Two of those documents even did not relate to the detenu at all but to a co-accused and third was an application filed by the detenu himself subsequently before the Magistrate which was not a document required in normal course to be given to the detenu subsequent to the order of detention. The Apex Court, therefore, went on to hold that the furnishing of such documents without any □covering letter□ explaining the purpose for supplying those documents was likely to create confusion and, therefore, the detention was quashed.

10. It can never be said that the judgment of Senthil Kumar case, lays down a proposition that each and every document given to a detenu during his detention must be accompanied by a covering letter setting out the purpose for which the document was being given and if there is no such covering letter given, it would automatically vitiate the order of detention. Unfortunately, this seems to be deduction of the Division Bench in Rabiyathil Pathavia case, cited supra, with which we are unable to agree.

11. In this case, the only document which was supplied to the detenu was the appliction made by the Deputy Director of Directorate of Revenue Intelligence under Secs.110(1A), 110(1B) and 110(1C) of the Customs Act read with Sec.451 of the Crl.P.C. By that, the concerned authority prayed for certification of the correctness of the inventory of the seized goods, which was seized as per the seizure mahazar dated 23-8-2002 and further to enable the Department to dispose of the seized goods as provided in law. Now, it is obvious that such an application was bound to be served on the accused/detenu and it was correctly sent. There is a clear stamp of the District Munsif cum Judicial Magistrate on the application and also the stamp of the office of the petitioner suggesting that that application was made on 21-10-200 2 before the Judicial Magistrate, Alandur. Therefore, in our opinion, when the accused/detenu was a party to the petition, copy of the petition was bound to be supplied as per the order of the court to the accused/detenu and a bare reading of the document was sufficient to know the purpose for which the said petition was served on the accused/detenu. Nothing more was required to be explained to the accused/detenu by any covering letter and, therefore, even on facts, we are convinced that no covering letter was even necessary when the said document was served on the detenu. We are, therefore, unable to agree with the view expressed in Rabiyathil Pathavia case, cited supra, and would choose to answer the reference in negative.

12. In our view, in order to attract the infringement of Art.22(5) of the Constitution, the following factors are a must. There should be a supply of document, which is in the nature of "additional material" in support of the grounds already supplied to the detenu meaning thereby, that such documents should have a relevance to the detention aspect or nexus with the detention or should have some connection with it. If such document is supplied during detention then, however, an adequate care must be taken to see that the detenu is not confused. For this, wherever necessary, the authorities may explain in a separate covering letter. However, a "covering letter" is not a must and its" absence does not vitiate the detention where such covering letter is superfluous, which is precisely the case here. Since we have answered the reference in negative, we would choose to dismiss the habeas corpus petition.

13. It was suggested that the document was in English and no Tamil translation was supplied. We have mentioned this argument only to be rejected because firstly this document had no connection whatsoever with the detention and was, therefore, not required to be translated; and secondly, there is a clear-cut endorsement that the whole document was explained to the detenu in Tamil.

14. Learned counsel also invited our attention to the two aforementioned judgments of the Division Bench of this Court in HCP No.23 of 2002 (Valarmathi"s case) and HCP No.768 of 2002 (Ahamed Thambi"s case). However, there also, the judgment in Rabiyathil Pathavia case has alone been relied upon with which we are unable to agree. Therefore, merely because the decision in Rabiyathil Pathavia case has been followed in those two cases, it cannot be a pointer to the correctness of those judgments.

15. For the reasons stated supra, the reference is answered in negative and the petition is dismissed.

Index:Yes
Website:Yes

Jai

1. Secretary to Government
Public (SC) Department
State of Tamil Nadu
Fort St. George
Chennai 600 009

2. Secretary to Government
Ministry of Finance
Department of Revenue
New Delhi

3. The Superintendent of Central Prison
Central Prison
Chennai 600 003

4. The Public Prosecutor
High Court Buildings